

CRAIG H. MISSAKIAN  
United States Attorney

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7200  
Fax: (415) 436-6748

ERIC J. HAMILTON (CABN 296283)  
Deputy Assistant Attorney General

DIANE KELLEHER  
Branch Director

CHRISTOPHER HALL  
Assistant Branch Director

ANDREW M. BERNIE

CESAR E. AZRAK

Trial Attorneys

Civil Division, Federal Programs Branch

1100 L Street, NW  
Washington, DC 20005  
Telephone: (202) 353-7203  
andrew.m.bernie@usdoj.gov

Counsel for Defendants

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, *et al.*

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States, *et al.*,

Defendants.

Case No. 3:25-cv-03698-SI

**REVISED NOTICE**

1 Defendants respectfully provide this Revised Notice to inform the Court about both  
2 Defendants' discovery responses and Defendants' position regarding the current status of  
3 discovery. After the filing of the original Notice on August 11, 2025 (ECF 244), Plaintiffs asked  
4 a question about the relationship between the Notice and the pending mandamus petition in the  
5 Ninth Circuit. Defendants file this Revised Notice to be sure that Plaintiffs' question is resolved  
6 via a public filing.

7 On August 11, 2025, Defendants served responses and objections to Plaintiffs' Request for  
8 Production of Documents, ECF NO. 178-1 Ex. A (RFPs). As to RFPs 2 and 3, subject to and  
9 without waiving their stated objections, Defendants produced all documents located after a  
10 reasonable search that are responsive to those RFPs (all responsive documents are maintained by  
11 the Office of Personnel Management); Defendants did not withhold any documents responsive to  
12 these two RFPs, either on the basis of privilege or on any other ground.

13 As to RFP 1, subject to and without waiving their stated objections, Defendants are in the  
14 process of producing those portions of any responsive documents located after a reasonable search  
15 over which Defendants are not claiming a privilege. Defendants have made an initial production  
16 of such records. Defendants have not yet completed the processing of all responsive and non-  
17 privileged records but are working diligently to do so as expeditiously as possible, and will make  
18 rolling productions of responsive records beginning August 11, 2025 (i.e., yesterday). In addition,  
19 Defendants intend to produce a privilege log in a format consistent with the Federal Rules of Civil  
20 Procedure within 30 days of the start of production (i.e., 30 days from yesterday).

21 Although Plaintiffs' RFPs purported to direct Defendants to provide all responsive  
22 documents by August 11, Defendants are permitted to object to this instruction and they have done  
23 so. *See* Fed. R. Civ. P. 34(2)(B). Likewise, Defendants are permitted to object to Plaintiffs'  
24 purported directive that a privilege log be supplied by yesterday, and they have also done so, while  
25 providing a reasonable later date by which they will in fact provide a privilege log. All of this is  
26 consistent with both the Federal Rules of Civil Procedure and ordinary discovery practice.

27 Defendants nonetheless file this Revised Notice now because they anticipate that Plaintiffs  
28 will in fact object to these responses and seek relief from the Court. Defendants will file an

appropriate response to any such motion if and when it is filed but, to be clear, Defendants’ position does not reflect noncompliance with any order of this Court. On July 25, 2025, the Court denied Defendants’ motion to quash, *see* ECF No. 228—i.e., it denied Defendants’ July 15, 2025 motion which requested that the Court “reliev[e] Defendants of any obligation to respond to the RFPs” at all. ECF No. 210 at 1. Since the Court denied Defendants’ motion to quash, Defendants are not relieved of their obligation under the Federal Rules of Civil Procedure *to respond* to the RFPs. *See* ECF No. 228 at 2 (“The Court declines to alter the current discovery response deadline of August 11, 2025.”). And although the Court repeated its prior conclusion, with which Defendants’ disagree, that any privilege, “if it exists at all,” is overcome by Plaintiffs’ need for the requested materials, *id.* at 2-3, the Court’s denial of the motion also anticipated that Defendants would withhold responsive documents that they believe are privileged, and did not prohibit them from doing so. *See id.* at 5 (“To the extent defendants withhold relevant documents that they assert are privileged, defendants shall provide plaintiffs with a privilege log for any specific assertions.”).

Plaintiffs may argue that Defendants have misunderstood the Court’s intentions as reflected in that order; for example, Plaintiffs may argue that in its July 25 denial of Defendants’ motion to quash, the Court *did intend* (i) to preclude Defendants’ ability to withhold records they deem privileged, (ii) to prevent Defendants from objecting to Plaintiffs’ purported directive to *produce* all responsive non-privileged documents by yesterday, (iii) to object to the purported directive to produce a completed privilege log by yesterday, or (iv) to otherwise cut off Defendants’ ability to advance reasonable objections permitted by the Federal Rules of Civil Procedure. Defendants would disagree with any such reading of the Court’s July 25 order, since it denied a motion to quash, and did not compel production or grant other relief. Defendants could not have sought a stay of the Court’s July 25 Order, since a denial of a motion to quash does not do anything other than decline to relieve Defendants of their obligations to respond to Plaintiffs’ RFPs—an obligation imposed by the Federal Rules of Civil Procedure, not any prior order from this Court. To be clear, however, Defendants did argue, in the reply brief supporting their pending mandamus petition, that the Ninth Circuit’s writ of mandamus should not only require vacatur of the July 18 order requiring production of the ARPPs, but also prohibit this Court from compelling other

1 additional discovery at this time—the type of discovery that the denial of the motion to quash  
 2 contemplates, but does not yet compel. *See* Reply in Support of Petition for Writ of Mandamus, *In*  
 3 *re Trump*, No. 25-4476, at 15 (9th Cir. August 8, 2025)

4 To be sure, if Plaintiffs seek and the Court grants further relief—and in particular, if the  
 5 Court issues an order that actually requires Defendants to produce privileged material—  
 6 Defendants may seek relief from any such order from the Ninth Circuit. And of course, if  
 7 Defendants are unable to secure relief from a future order from this Court or a higher court,  
 8 Defendants recognize their obligation to comply with any such order. But no such order has yet  
 9 been issued. For the reasons previously explained, Defendants’ responses and objections to the  
 10 RFPs are consistent with this Court’s prior orders and all applicable legal requirements.

11  
 12 Dated: August 12, 2025

Respectfully submitted,

13 CRAIG H. MISSAKIAN  
 14 Acting United States Attorney  
 15 U.S. ATTORNEY’S OFFICE  
 450 Golden Gate Avenue, Box 36055  
 San Francisco, California 94102-3495

16 ERIC J. HAMILTON (CABN 296283)  
 17 Deputy Assistant Attorney General

18 DIANE KELLEHER  
 Branch Director

19 CHRISTOPHER HALL  
 Assistant Branch Director

20 s/ Cesar Azrak  
 21 Cesar Azrak  
 Andrew Bernie  
 Trial Attorneys  
 22 United States Department of Justice  
 Civil Division, Federal Programs Branch  
 23 1100 L Street, NW  
 Washington, DC 20005  
 24 Telephone: (202) 305-0693  
 25 cesar.e.azrak@usdoj.gov

26 *Counsel for Defendants*  
 27  
 28